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No. 749

In the Supreme Court of the United States

OCTOBER TERM, 1964

UNITED AIRCRAFT CORPORATION, PETITIONER

v.

LODGE 743, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

AND

LODGE 1746, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

AND

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. 1a–12a) is reported at 337 F. 2d 5; the opinion of the district court (A. 3–11)[1] is reported at 220 F. Supp. 19.

[1] "A." refers to those portions of the transcript printed for the use of the court below and filed with the petition.

JURISDICTION

The judgment of the court of appeals (Pet. 12a) was entered on October 1, 1964. The petition for a writ of certiorari was filed on December 10, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, the district court properly declined to enjoin the union from prosecuting unfair labor practice charges before the National Labor Relations Board involving the same subjects that the employer and the union had agreed to submit to final arbitration, without recourse "to any appeal or review under any State or federal laws."

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth at pp. 13a–17a of the petition.

STATEMENT

On June 9, 1960, the Unions, who are the recognized bargaining representatives for more than 20,000 of the Company's employees, went on strike at various Company plants (A. 12, 65). On August 11, 1960, the Unions and the Company entered into strike settlement agreements providing for the termination of the strike and reinstatement of all but 50 named strikers (A. 45–50). The Company asserted that the 50 strikers were not entitled to reinstatement because of strike misconduct, and the parties agreed to submit

this question to arbitration (A. 12–13, 37–38, 66–67, 85). On August 24, 1960, the Company and the Unions entered into a submission for arbitration, in which they agreed to accept the arbitrators' decision regarding the 50 strikers' reinstatement rights under the settlement agreement "finally and completely, and without recourse whatsoever to any appeal or review under any State or federal laws by the [Unions], or by the [Company], or by any [of the 50 strikers]" (A. 38, 42–45, 50–51, 85–86, 90–93, 98–99). The arbitrators ruled that 36 of the strikers were guilty of strike misconduct and were not entitled to the reinstatement rights given the other strikers under the strike settlement agreements (A. 38–39, 86–87).

The Unions then filed unfair labor practice charges with the Board, alleging, *inter alia,* that the Company was violating Sections 8(a) (3) and (1) of the Act by discrimininating against several thousand strikers, including the 36 strikers discussed above, because of their union activity (A. 39–40, 52–62, 87–88). On December 11, 1961, the Unions also filed suits in the district court under Section 301 of the Labor-Management Relations Act, alleging that the Company was breaching the strike settlement agreements by, *inter alia,* refusing to reinstate strikers guaranteed reinstatement under those agreements (A. 11–23, 65–76). The suits seek declaratory relief, specific performance of the strike settlement agreements, and damages for breaches thereof (A. 23, 77).

After investigation of the unfair labor practice charges, the General Counsel of the Board, on Feb-

ruary 7, 1963, issued a cor plaint which, as amended,[2] alleged, *inter alia,* that the Company violated Sections 8(a) (3) and (1) of the Act by discriminating against the strikers, including the 36 involved in the arbitrators' awards, because of their union activity and that the strike had been caused by the Company's unfair labor practices (Board Case Nos. 1–CA–3355, *et al.*).[3] Hearings before a Trial Examiner commenced on May 16, 1963 (A. 40, 88–89).

On May 27, 1963, the Company filed counterclaims in the Unions' Section 301 suits. The counterclaims—which form the basis for this case—alleged that the Unions, by filing unfair labor practice charges and participating in the Board unfair labor practice hearing with respect to the 36 strikers whom the arbitrators had found were not entitled to reinstatement, were repudiating and breaching "the agreement to arbitrate the issues concerning the aforesaid strikers and [the Unions'] agreement to be bound by the arbitrators' decisions thereon" (A. 40, 88–9). The Company sought the following relief, *inter alia* (A. 41–42, 89–90):

> (a) a judgment * * * declaring that [the Unions have] breached [their] contractual obligations * * *

---

[2] Relevant portions of the amended complaint are set forth in the Appendix, *infra*, pp. 10–[illegible].

[3] The Board's investigation of the charges was prolonged by the Company's refusal to turn over subpoenaed documents during the investigation, until the Board secured judicial enforcement of the subpoenaes. *National Labor Relations Board* v. *United Aircraft Corp.*, 200 F. Supp. 48 (D. Conn.), affirmed, 300 F. 2d 442 (C.A. 2).

> (b) a decree requiring [the Unions] to withdraw any and all charges [they have] filed with the * * * Board or its General Counsel alleging that any of the [36] strikers named [in the counterclaims] were discriminatorily denied employment by [the Company] at the termination of the strike on August 11, 1960, and request and move that the said General Counsel dismiss from his complaint against [the Company] any reference to said strikers;
>
> * * * * *
>
> (d) an award of compensatory damages and such exemplary damages as are appropriate in the premises against [the Unions] adequate to compensate [the Company] for all injuries sustained as a result of [the Unions'] violations of [their] agreement to arbitrate and to deter [the Unions] from such willful and malicious violations in the future;

The Unions moved to dismiss the counterclaims on the grounds (1) that the court was without jurisdiction over the subject matter, and (2) that the counterclaims failed to state a claim upon which relief could be granted. The Board, having intervened in the proceedings after the counterclaims were filed, likewise moved to dismiss the counterclaims on the ground that they failed to state a claim upon which relief can be granted (A. 62, 115). The district court dismissed the counterclaims (A. 3–11), and the court of appeals affirmed (Pet. 2a–12a).

ARGUMENT

The decision of the court below is correct, there is no conflict of decisions, and there is no occasion for further review.

Petitioner's basic contention (Pet. 9–15) is that the policy in favor of enforcing agreements to arbitrate, reflected in Section 301 of the Labor-Management Relations Act and in decisions of this Court (see cases cited Pet. 10), is so strong that, where the parties have agreed to submit certain matters in a labor dispute to binding arbitration, a district court is required to enjoin one of the parties from prosecuting unfair-labor practice charges based upon those matters which it has filed with the National Labor Relations Board. We submit, however, that, despite the arbitrators' determination that the 36 strikers were not entitled to reinstatement because of their misconduct, the General Counsel was fully justified in issuing a complaint based in part upon the refusal to reinstate those strikers. Indeed, Section 10(a) of the National Labor Relations Act provides that the Board's authority to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." See *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, 272.

There are two grounds upon which the Board might conclude that its normal policy of following an arbitration award would not bar it from granting relief against the Company's refusal to reinstate the 36 strikers. ***First,*** the agreement respecting arbitration of the reinstatement rights of the strikers accused of misconduct was part of a larger strike settlement agreement, pursuant to which the remaining strikers were to be restored to their jobs on a non-discriminatory basis. However, the General Counsel, after in-

vestigation of the charges filed by the Unions, has issued a complaint alleging that the Company committed unfair labor practices in the administration of the strike settlement agreement, and that the strike itself was caused by other Company unfair labor practices (pp. 10–[illegible], *infra*). In these circumstances, the Board might conclude that the settlement agreement had been so undermined that no effect should be given to any part of it. Cf. *Mastro Plastics Corp.* v. *National Labor Relations Board*, 350 U.S. 270, 279–284.

Second, if the strike were found to have been caused by unfair labor practices, the issue decided by the arbitrators would not necessarily be dispositive of the right of the 36 strikers to reinstatement under the Act. The only issue decided by the arbitrators was whether those strikers engaged in misconduct which warranted denying them reinstatement (A. 43, 92). But where a strike is caused by employer unfair labor practices, the Board, in determining whether the striker is entitled to reinstatement, does not merely evaluate his misconduct, but balances it against the severity of the employer's unfair labor practices. See *National Labor Relations Board* v. *Thayer Co.*, 213 F. 2d 748, 753–755 (C.A. 1), certiorari denied, 348 U.S. 883; *Local 833, United Auto Workers* v. *National Labor Relations Board*, 300 F. 2d 699, 702–704 (C.A. D.C.), certiorari denied, 370 U.S. 911.

At the present stage of the Board proceedings, it is impossible to know what effect the Board will give to the arbitrators' decision. But it is for the Board in

the first instance to make that determination. If the Board ultimately should hold that any or all of the 36 strikers are entitled to reinstatement, petitioner would have full opportunity to challenge the Board's treatment of the arbitrators' decision in any judicial review it may seek of the Board's final order. At this time, however, any attempt to anticipate the outcome of the Board's proceedings would be wholly speculative. Since, as shown above, the General Counsel had an adequate basis for issuing the complaint, the courts below properly refused to interfere with the administrative proceedings. Cf. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41; *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535.

The cases relied on by petitioner (Pet. 12–13) are inapposite for the reasons given by the court below.[4] Nor is there substance to petitioner's contention (Pet. 13) that, since the relief requested here was directed solely at the Union, it "left the General Counsel entirely free to submit the question to the Board." It would be difficult for the General Counsel to make an

[4] Thus, as the court noted (Pet. 8a), *Retail Clerks International Ass'n* v. *Lion Dry Goods, Inc.*, 369 U.S. 17, "was concerned only with the general question of whether a strike settlement agreement, including one executed by a union not entitled to be an exclusive bargaining agent was a 'contract' enforceable under § 301(a) * * *. It did not pass on the enforceability of specific provisions of that agreement." Similarly, *United Textile Workers* v. *Textile Workers Union*, 258 F. 2d 743 (C.A. 7), "seems to have focused almost exclusively on the general question of whether contracts between unions which are not collective bargaining agreements are 'contracts' enforceable under § 301(a)" (*ibid*).

adequate presentation of the case to the Board without the full cooperation of the charging party, and such cooperation could hardly be expected if the charging party were under the injunction sought by petitioner.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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DOMINICK L. MANOLI,
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JANUARY, 1965.

APPENDIX

The relevant provisions of the Unfair Labor Practice Complaint, as amended, issued by the General Counsel of the Board are as follows:

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIRST REGION

Case No. 1-CA-3355 (1-3)

IN THE MATTER OF UNITED AIRCRAFT CORPORATION (PRATT & WHITNEY DIVISION)

AND

LODGE NO. 1746, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO

* * * * *

24. All production and maintenance employees of the United Aircraft Corporation, Pratt & Whitney Aircraft Division, East Hartford, Connecticut at the East Hartford plant (including the DE Lab and the Willgoos Lab), including inspectors, crib attendants, material handlers, factory clerks and working leaders but excluding timekeepers, engineering and technical employees, laboratory technicians, foremen's clerks, salaried office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

24A. All production and maintenance employees of the United Aircraft Corporation, Pratt & Whitney Aircraft Division, at its Manchester, Connecticut plant (Cheney Mills Buildings 1, 2, 3, 19, the Finishing Mill, and the Weaving Mill) including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding all timekeepers, professional employees, engineering and technical employees, laboratory technicians, foremen's clerks, office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

25. All production and maintenance employees at the Windsor Locks plant including working leaders and all hourly-rated technicians in the chemical, rubber, metallurgical, vibration, and electronics laboratories, but excluding executives, professional employees, salaried technicians in the Engineering Department, foremen's clerks who have access to confidential information, draftsmen, plant protection employees, Medical Department employees, salaried office and salaried clerical employees, outside servicemen, truckdrivers, watch engineers, group supervisors and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

26. All production and maintenance employees at the Broad Brook plant including working leaders

and hourly-rated technicians in the electronics laboratory, but excluding executives, professional employees, salaried technicians in the Engineering Department, foremen's clerks who have access to confidential information, draftsmen, plant protection employees, Medical Department employees, salaried office and salaried factory clerical employees, timekeepers, outside service men, truckdrivers, watch engineers, group supervisors and all other supervisory employees as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

27. At all times material herein Lodge #1746 has been the representative for the purposes of collective bargaining of a majority of the employees in the unit described in Paragraph 24 and Paragraph 24a above and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

28. At all times material herein Lodge #743 has been the representative for the purposes of collective bargaining of a majority of the employees in the units described in Paragraphs 25 and 26 above and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

29a. Since on or about September 11, 1953 and continuing to the inception and termination of the strike, referred to in Paragraph 31 *infra,* Respondent did refuse and continues to refuse to bargain collectively

in good faith with Lodge #1746 and Lodge #743 (hereinafter jointly called the Union) as the exclusive representatives of all the employees in the units described above in Paragraphs 24, 24a, 25 and 26 by refusing to furnish to the Union information necessary and relevant to its functions as exclusive representative in policing the contracts then and thereafter in force, in serving and representing the employees in said units, in bargaining collectively with Respondent and in other related matters, although Respondent had such information in its possession and concealed such possession and such information from the Union and although the Union had requested such information on several occasions since September 11, 1953.

29b. Since on or about October 13, 1960 and continuing to date, Respondent did refuse and continues to refuse to bargain collectively in good faith with the Union as the exclusive representative of all the employees in the units described above in Paragraphs 24, 24a, 25 and 26 by refusing to furnish to the Union data relating to the rights of strikers to reinstatement and the manner in which the Strike Settlement Agreements, referred to in Paragraph 32, *infra,* were being implemented by Respondent, and in related matters, thereby repudiating totally its obligation to bargain collectively in good faith and by refusing since the termination of the strike, referred to in Paragraph 31, *infra,* to furnish the Union complete seniority lists or complete seniority information of the employees in the units described above despite requests renewed by the Union on or about October 13, 1960, October 14, 1960, November 11, 1960, November 25, 1960, April 10, 1961 and continuing to date.

29c. Since on or about February 5, 1964 and continuing to date, Respondent, Hamilton Standard Division

located in Windsor Locks and Broad Brook, Connecticut, and Pratt & Whitney Division, located in East Hartford and Manchester, Connecticut, refused and is refusing to bargain collectively in good faith with Lodge #1746 and Lodge #743 as the exclusive bargaining representatives of the employees in the units described above in Paragraphs 24, 24A, 25 and 26 in that Respondent refused and failed to furnish the Unions with the following information, documents and records necessary and relevant to their functions as exclusive collective bargaining representatives of said units:

(1) Bi-weekly "employee service record" at Pratt & Whitney;
(2) Monthly "personnel data listing" at Hamilton Standard;
(3) "Put-on" records;
(4) Change of status records;
(5) Termination slips;
(6) Lay off lists;
(7) "Employee classification records" (also known as wage and salary master card);
(8) "Employee ranking list" together with a copy of the "employee performance rating" of each employee on such list;
(9) "Physical demands record" for each job in the bargaining unit;
(10) "Functional capacity record" of each employee in the bargaining unit.

30. Since on or about August 13, 1960 and at all times thereafter to date, Respondent refused to bargain with the Union as the exclusive representatives of all the employees in the units described above in Paragraphs 24, 24a, 25 and 26 by unilaterally changing strikers' rights to reinstatement, seniority and other terms and conditions of employment.

31. From on or about June 8, 1960 to on or about August 11, 1960, certain employees of Pratt & Whitney and Hamilton Standard employed at the East Hartford, Windsor Locks and Broad Brook plants ceased work concertedly and went out on strike. Said strike was caused and prolonged by the unfair labor practices of Respondent described above in Paragraph 29a.

32. On or about August 11–13, 1960. the employees listed with their plant designations in Appendix A, attached hereto and made a part hereof, who had engaged in the strike or other concerted activities referred to above in Paragraph 31 made an unconditional offer to return to their former or substantially equivalent positions of employment, pursuant to the terms of the Strike Settlement Agreements, attached hereto and made a part hereof as Appendix B (Pratt & Whitney) and Appendix C (Hamilton Standard).

33. Since on or about August 13, 1960 and continuing to date, Respondent did fail and refuse and continues to fail and refuse to reinstate the employees listed in Appendix A to their former or substantially equivalent positions of employment.

34. Since on or about August 13, 1960 and continuing to date, Respondent did fail and refuse and continues to fail and refuse to reinstate the employees listed in Appendix A to their former or substantially equivalent positions of employment for the reasons that said employees had joined or assisted Lodge #1746 and Lodge #743, or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and/or had participated in the strike described above in Paragraph 31.

35. Since on or about August 13, 1960 and continuing to date, Respondent has discriminated and is discriminating against its employees in regard to hire or tenure of employment or term or condition of employment by:

a. Requiring all strikers who engaged in the strike referred to above in Paragraph 31 and who were not reinstated to any position prior to December 31, 1960, to file new employment applications as a condition of employment on and after January 1, 1961.

b. Requiring all persons who engaged in the strike referred to above in Paragraph 31 and who were reinstated to a position in accordance with Paragraph 4(b) of the Strike Settlement Agreements referred to above in Paragraph 32 to file waivers of their rights to be reinstated to their pre-strike positions.

c. Requiring all strikers who were returned to some position subsequent to the strike referred to above in Paragraph 31 to undergo physical examinations.

d. Failing to reinstate female strikers at Hamilton Standard and Pratt & Whitney.

e. Altering seniority, vacation and other rights, privileges and benefits and other terms and conditions of employment previously enjoyed for all strikers re-employed by Respondent on and after January 1, 1961.

f. Discriminatorily delaying reinstatement of strikers until after January 1, 1961 by operating with a reduced labor force, working excessive overtime and by other means between September and December, 1960.

36. Respondent engaged in the activities described above in Paragraph 35 for the reason that the strikers specified therein joined or assisted Lodge #1746 and Lodge #743 or engaged in other concerted activities

for the purpose of collective bargaining or other mutual aid or protection.

37. Respondent by its following named agents, representatives and supervisors on or about the date or dates set opposite their names has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act in that it did:

a. Threaten its employees with economic reprisal for engaging in Union or other protected activities:

Foreman Cubbs—May 21, 1960
Robert Sweeney—May 21, 1960
William Robinson—May 21, 1960
Leonard Willis—May 21, 1960
Charles Hurd—May 21, 1960, June 7, 1960 and June 8, 1960
Roger Hall—various times on and after May 21, 1960
D. Taft—May 21, 1960 and June 8, 1960
Albert Leone—May 21, 1960
George Lawrence—May 21, 1960
Foreman Moriarity—May 21, 1960
Frank Slusarz—June 1, 1960; sometime in February 1961
Tracey Page—June 1, 1960
George Sabisky—June 1, 1960
Leonard Welles—June 1, 1960
Frank Desjardins—June 1, 1960
John Carpenter—June 6, 1960
Michael Reardon—June 8, 1960
George McCready—June 8, 1960
Jack Baker—June 8, 1960
John Ruff—June 8, 1960
L. Davis—June 8, 1960
Harold Walsh—June 8, 1960

O. Harvey—June 8, 1960
Carl McAllister—sometime June-August, 1960
Raymond Pelletier—sometime June-August, 1960
Foreman Kaler—sometime June-August, 1960
S. Matava—sometime June-August, 1960
Henry Ritter—sometime June-August, 1960
Edward Erbow—sometime June-August, 1960
Foreman Ackerberg—August 1, 1960
N. B. Morse, August 1, 1960
William Dwyer—sometime September, 1960
George Bentley—sometime September, 1960
William Slaffenhaffer—sometime September, 1960
Foreman Postum—sometime February, 1961
Foreman Robert Backus—June 1960 to August 1960
Foreman Hajak—June 1960 to August 1960
General Foreman Grennan—June 1960 to August 1960
Superintendent Howatt—June 1960 to August 1960
Foreman Chenier—June 1960
Foreman Gus Holderman—June 1960 to August 1960
Foreman Maxwell—June 1960 to August 1960
Foreman Tutt—June 1960 to August 1960
Foreman Robert Hewall—June 1960 to August 1960
Foreman Phalen—June 1960 to August 1960
Foreman Radavick—June 1960
Charles Hurd—November 1960
Personnel Manager Wilhide—June 1960 to August 1960
Foreman Sanfield—June 1960 to August 1960
Foreman Andrew Birch—June 1960 to August 1960
Foreman Romeo Cartier—June 1960 to August 1960
Foreman Hill—June 24, 1960 and September 1960
Foreman Joseph Slaffenhoffer—October 1960

b. Interrogate its employees concerning their Union affiliations and sympathies:

Edward Rollands—May 21, 1960
George Sabisky—June 1, 1960
William Dwyer—early part of 1961
Foreman Norman Millard—June 1960
Foreman John Swiatkewicz—May 1960 to June 1960
Foreman William Smith—June 1960
Personnel Manager DeMarco—October 1960
Foreman Ray Morin—April 1960 to June 1960

c. Make offers of benefit conditioned upon ceasing to engage in Union or other protected concerted activity:

Foreman Robert Sweeney—at various times in June-August, 1960

d. Require all persons who engaged in the strike referred to above in Paragraph 31 and who were not reinstated to any position prior to December 31, 1960 in accordance with Paragraphs 4(a) and 4(b) of the Strike Settlement Agreements referred to above in Paragraph 32, to file new employment applications as a condition of employment on and after January 1, 1961.

e. Require all persons who engaged in the strike referred to above in Paragraph 31 and who were reinstated to a position in accordance with Paragraph 4(b) of the Strike Settlement Agreements referred to above in Paragraph 32 to sign waivers of their rights to be reinstated to their pre-strike positions.

f. Require all strikers who were returned to some position subsequent to the strike referred to above in Paragraph 31 up to and including December 31, 1960 to undergo physical examinations.

g. On and after January 1, 1961 terminate the seniority rights and other benefits of employment pre-

viously enjoyed, for all persons who engaged in the strike referred to above in Paragraph 31 and who were re-employed by Respondent on and after January 1, 1961.

h. Treat female strikers in a disparate manner at its plants of Hamilton Standard and Pratt & Whitney.

i. On or about January 4, 1963, threaten the Union that it would bring a civil suit against it unless the Union would withdraw the charges in Case Nos. 1–CA–3355 et al, or have those charges dropped from the consideration of the Board.

j. On or about May 14, 1963 institute separate civil suits against Lodge #1746 and Lodge #743 in the Superior Court for the State of Connecticut pursuant to its threat described above in Paragraph 37(i).

38. By the acts described above in Paragraphs 29 and 30 Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

39. By the acts described above in Paragraphs 33 and 35 Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

40. By the acts described above in Paragraph 37 Respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

41. By the acts described above in Paragraphs 29a, 29b, 29c, 30, 33, 35 and 37 Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(1).

42. The activities of Respondent, described above in Paragraphs 29a, 29b, 29c, 30, 33, 35 and 37, occurring

in connection with the operations of Respondent, described above in Paragraphs 17 and 18 have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

43. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a) (1), (3) and (5), and Section 2 (6) and (7) of the Act.

(S) Bernard L. Alpert,

BERNARD L. ALPERT,

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[Appendices Omitted]

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